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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/737,209	12/14/2000	Charles A. Bastyr	11306.1	1339
7590	12/18/2003		EXAMINER	MATHEW, FENN C
NEIL K. NYDEGGER NYDEGGER & ASSOCIATES 348 Olive Street San Diego, CA 92103			ART UNIT	PAPER NUMBER
			3764	

DATE MAILED: 12/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/737,209	BASTYR ET AL.	
	Examiner	Art Unit	
	Fenn C Mathew	3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 20 October 2003.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1,4,5,8-15,18,20 and 26-28 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) 1,4,5,8-15,18,20 and 26 is/are allowed.

6) Claim(s) 27 and 28 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. _____.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

a) The translation of the foreign language provisional application has been received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____

4) Interview Summary (PTO-413) Paper No(s) _____

5) Notice of Informal Patent Application (PTO-152)

6) Other: _____

DETAILED ACTION

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 27 is rejected under 35 U.S.C. 102(b) as being anticipated by Joutras (U.S. 5,954,621). Referring to claim 27, Joutras discloses a device comprising a first arm, and a second arm (32F, 34F), a joint assembly defined by an axis of rotation the first end of the first arm being attached to the joint assembly and first end of the second arm being pivotally attached to the joint assembly for rotation, a means attached to the second end of the first arm for stabilization (in the broadest interpretation, the straps provide stabilization), a mechanism for interconnecting the first arm and the second arm for establishing resistance to movement (see abstract), a one-way clutch mounted to the device for engaging the second arm to resist movement of the second arm in a selected direction, and a sub-mechanism for establishing resistance.

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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5. Claims 27-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bernstein (U.S. 5,037,088) in view of Joutras (U.S. 5,954,621) and Ferber (U.S. 5,445,581). Bernstein discloses a device comprising a first arm (24) having a first end and a second end, a second arm (22) having a first end and a second end, a joint assembly (34) defining an axis of rotation, the first end of the first arm being attached to the joint assembly to establish a fixed relationship between the first arm and the axis, with the first end of the second arm being pivotally attached to the joint assembly for rotation of the second arm about an axis in a first direction and in a second direction, a means (28) attached to the second end of the first arm for stabilization of the second end of the first arm during a movement of the first arm about the stabilized second end thereof, and a means mounted on the joint assembly for establishing a resistance to the rotation of the second arm about the axis. Bernstein discloses the claimed invention except for a one-way clutch member. Joutras discloses in an exercise device that it is advantageous to use a one-way clutch member in order prevent rotation in an unwanted direction. It would have been obvious to one having ordinary skill in the art at the time of invention to provide Bernstein with a one-way clutch as taught by Joutras in order to prevent unwanted rotation of the rotational resistance member.

6. Referring to claim 28, Bernstein as modified by Joutras above discloses the claimed invention except for the specific structure of the joint assembly. Ferber teaches an analogous device including a cone member (37) having a surface, and a cup member (35) having a surface dimensioned for mating engagement with the surface of the cone member at an interface there between to establish resistance. It would have

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been obvious to one having ordinary skill in the art at the time of invention to provide the joint structure with a cone member and cup member as taught by Ferber in order to further effect resistance during exercise.

Response to Arguments

7. Applicant's arguments with respect to claims 27-28 have been considered but are moot in view of the new ground(s) of rejection.

Allowable Subject Matter

8. Claims 1, 4, 5, 8-15, 18, 20, 26 are allowed. See paragraphs 14-15 of the office action dated July 13, 2003.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fenn C Mathew whose telephone number is (703) 305-2846. The examiner can normally be reached on Monday - Friday 9:00am - 5:30pm.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9302.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.



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fcm

November 23, 2003